APPENDIX A.

An Act in relation to the punishment of Criminals. Approved June 23, 1883, Laws of 1883, p. 76.

CHAPTER 38, SEC. 602, Illinois Revised Statutes. State Bar Assn. Edition, 1937.

SEC. 1. Be it enacted by the People of the State of Illinois represented in the General Assembly: That whenever any person having been convicted of either of the crimes of burglary, grand larceny, horse stealing, robbery, forgery, or counterfeiting shall thereafter be convicted of any one of such crimes committed after such first conviction the punishment shall be imprisonment in the penitentiary for the full term provided by law for such crime at the time of such last conviction therefor; and whenever any such person having been so convicted a second time as above provided, shall be again convicted of any of such crimes, committed after said second conviction the punishment shall be imprisonment in the penitentiary for a period not less than fifteen years; provided that such former conviction or convictions and judgment or judgments shall be set forth in apt words in the indictment. Smith Hurd Annotated #602, JA. 37, 563.

SEC. 603. SEC. 2. On the trial for any of said offenses a duly authenticated copy of the record of a former conviction and judgment of any court of record for either of said crimes against the party indicted shall be prima facie evidence of such former conviction, and may be used in evidence against such party."

APPENDIX B.

House Bill 803. Approved July 17, 1941.

An Act to Amend Section 1 of

"An Act in relation to the punishment of Criminals," "Approved June 23, 1883."

Be it enacted by the People of the State of Illinois represented in the General Assembly:

SECTION 1. Section 1 of "An Act in relation to the punishment of criminals," approved June 23, 1883 is amended to read as follows:

1. Whenever any person who has been convicted of burglary, grand larceny, horse stealing, larceny of a motor vehicle, larceny from the person, rape, robbery, forgery, arson, counterfeiting, kidnapping, confidence game or extortion by threats when the punishment was imprisonment in the penitentiary, shall thereafter be convicted of any of such crimes, committed after the first conviction, the punishment shall be imprisonment in the penitentiary for the full term provided by law for such crimes at the time of the last conviction therefor; and whenever any such person, having been so convicted the second time, as above provided, shall be again convicted of any of said crimes, committed after said second conviction, the punishment shall be imprisonment in the penitentiary for a period not less than fifteen (15) years; provided, that such former conviction or convictions and judgment or judgments shall be set forth in apt words in the indictment. Approved July 17, 1941. (Illinois Revised Statutes—Laws of 1941, Vol. 1, p. 573.)

APPENDIX C.

United States Constitution, Amendment XIV.

SECTION 1.

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX D.

United States Constitution.

SECTION 10—ARTICLE I.

"* * * No State shall pass any Bill of Attainder or *ex post facto* law."

APPENDIX E.

Illinois Statute in regard to Assaults to Commit felonies.

CHAPTER 38. SEC. 58. Illinois Revised statutes. 1937 State Bar Edition.

"An assault with an intent to commit murder, rape, mayhem, robbery, larcency, or other felony shall subject the offender to imprisonment for a term not less than one year nor more than fourteen years."

APPENDIX F.

CHAPTER 38. SEC. 581 in regard to Attempts.

"Whoever attempts to commit any offense prohibited by law and does any act toward it, but fails or is intercepted or prevented in its execution * * * when the offense thus attempted is a felony, shall be punished by imprisonment in the penitentiary not less than one nor more than five years."

APPENDIX G.

Illinois Constitution, ARTICLE II, SECTION 2 (1870).

"No person shall be deprived of life, liberty or property without due process of law."

APPENDIX H.

CHAPTER 38. SECTION 587. State Bar Edition, Revised statutes. (SEC. 7, DIV. II, Criminal Code.) (Defining "Infamous Crimes.")

"Every person convicted of the crime of murder, rape, kidnapping, willful and corrupt perjury or subornation of prejury, arson, burglary, robbery, sodomy or other crime against nature, incest, forgery, counterfeiting, bigamy or larceny, if the punishment for said larceny is by imprisonment in the penitentiary shall be deemed infamous, and shall forever thereafter be rendered incapable of holding any office of honor," etc.

(NOTE:—Horsestealing, larceny of a motor vehicle, larcency from the person, confidence game and ex-

tortion by threats are *not* "Infamous Crimes" but they are given harsh treatment under the Habitual Act. On the other hand murder, perjury, sodomy, incest and bigamy are "Infamous Crimes" but they are *not* included in the Habitual Act (1883 or 1941) and these "Infamous Crimes" are not given the harsh treatment. Compare with Appendix B.)

APPENDIX I.

Illinois Constitution of 1870. ARTICLE II. SECTION 5.

"The right of trial by jury as heretofore enjoyed shall remain inviolate," etc.

APPENDIX J.

Illinois Statute—Re Common Law.

CHAPTER 28. SECTION 1. 1937 Revised statutes.

"The common law of England so far as the same is applicable and of a general nature shall be the rule of decision and shall be considered as of full force until repealed by legislative authority."

APPENDIX K.

Illinois statute re Criminal trials according to common law.

CHAPTER 38. SECTION 726. 1937 State Bar Edition, Revised statutes.

"All trials for criminal offenses shall be conducted according to the course of the common law, except when this Act" (An Act to revise the law in relation to Criminal jurisprudence, Approved March 27, 1874)

"points out a different mode, and the rules of evidence of the common law shall also be binding upon all courts and juries in criminal cases except as otherwise provided by law."

APPENDIX L.

See Letter of Hon. Donald S. McKinlay, Judge Criminal Court of Cook County, Illinois, dated November 30, 1943, addressed to Hon. Dwight H. Green, Governor of Illinois, reciting conditions under the Act of 1883. The letter is an official document under SECTION 31, ARTICLE VI of the Illinois Constitution.

APPENDIX M.

Illinois Constitution—SECTION 31. ARTICLE VI.

Re Reports by Judges of Courts of Record.

"All judges of courts of record * * * shall * * * report in writing * * * such defects and omissions in the laws as their experience may suggest," etc.

APPENDIX N.

Impartial Jury Trial.

The Constitution of Illinois, SECTION 9, ART. II reads:

"* * * in all criminal prosecutions the accused shall have the right to * * * a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed."

APPENDIX O.

SUPERIOR COURT OF COOK COUNTY.
JUDGE DONALD S. McKINLAY.
IN CHAMBERS.

CHICAGO, NOVEMBER 30, 1943.

Hon. Dwight H. Green,
Governor of the State of Illinois,
Springfield,
Illinois.

DEAR GOVERNOR GREEN:

During my service in the Criminal Court last year, I had several cases where a defendant was indicted under the Habitual Criminal Act. As you know, this may be done where a defendant has previously been convicted of any one of certain serious felonies listed in the Act. In several of these named crimes a second conviction compels the court to sentence the defendant to the penitentiary for life. I am advised by the Division of Correction that such life sentences under the Habitual Criminal Act are neither subject to parole, as other life sentences are in twenty years, nor to any good time allowance. This means that for a second conviction the defendant must stay in prison for the rest of his life unless pardoned by the Governor of the State.

This might not seem wrong in some cases but is excessive punishment in many others. For example, the criminal statutes make all crimes subject to an indeterminate sentence with a minimum of one year, except the four crimes of treason, murder, rape and kidnapping. This would indicate that the Legislature regarded these four crimes as the most serious. However, a defendant convicted of any one of these four and sentenced to the penitentiary for life, may be released on parole at the end of twenty years. However, if a person enters a chicken coop intending to

steal a chicken and does so, he is guilty of burglary and subject to an indeterminate sentence of one year to life. If he does the same thing a second time and is convicted, the law requires that he be sentenced to the penitentiary for life and is not given the benefit of any right to parole or good conduct time. Also, if a person enters a bank, not intending to commit a crime, and while there picks up $100,000.00, gets away with it and spends it, he could be convicted of grand larceny and punished by a sentence of one year to ten years. The same person can commit the same offense a second time and the maximum sentence as an habitual criminal in his case would be ten years and be subject to "good time off."

The reason I mention a burglary case as an example is that the Legislature has made a very high maximum, life imprisonment, for any kind of burglary. This, I believe, should be changed so that only the burglary of an inhabited dwelling, and especially in the night-time, would be punishable by life imprisonment. However that may be, I feel that one convicted as an habitual criminal receives plenty of punishment when the law gives him the maximum sentence possible, and there is no occasion to deprive him of the benefit of either the parole law or the "good time off" act.

This, according to the Division of Correction, must be changed by legislation. I believe that they base their present idea on an opinion of the Attorney General filed in 1927. I am not satisfied that the old cases cited on the subject are controlling at present. The statutes involved at that time had different provisions from the present and there has been a later tendency to liberalize some older law which was found to be too harsh. I believe that it would be advisable to have the Attorney General go into the matter and give an up to date opinion on the question of application of "good time" or the parole act to those sentenced for life as habitual criminals. I have always been in favor of punishing the repeater more than the first offender, but as my examples above show, there is great room for improvement. The man sentenced for life on a serious murder, rape, kidnapping, or treason charge should not have any advantage over the man sentenced for life because he twice stole a chicken from a coop.

I feel that the public should know of this situation and am sending copies of this letter to the press. If I am in error in any of my statements, I will be glad to be advised of it. If you agree with me that some change is necessary, I trust you will request new legislation or other action that might be deemed necessary.

Respectfully yours,

JUDGE DONALD S. MCKINLAY.

APPENDIX P.

Judicial Code of the United States, Section 237 (b) as amended 28 U. S. C. A. Section 344 (b).

"It shall be competent for the Supreme Court by certiorari to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a state in which a decision could be had where is drawn in question the validity of a treaty, or statute of the United States; or where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph."

APPENDIX Q.

Sec. 246 (Criminal Code) (Par. 501):

"Robbery is the felonious and violent taking of money, goods or other valuable thing, from the person of another by force or intimidation. Every person guilty of robbery shall be imprisoned in the penitentiary not less than one year nor more than twenty years; or if he is armed with a dangerous weapon or if he has any confederate present so armed, to aid or abet him, he shall be imprisoned in the penitentiary for any term of years not less than one year or for life."